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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,

Plaintiffs,

v.

KERR-MCGEE CHEMICAL LLC,

Defendant.

CIVIL ACTION NO. 05C 2318

Judge Hibbler

Magistrate Judge Geraldine Soat Brown

CONSENT DECREE

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I. BACKGROUND

A. Lindsay Light Company, a predecessor to Settling Defendant Kerr-McGee Chemical LLC ("Settling Defendant"), established the Rare Earths Facility ("REF") in West Chicago, Illinois, in 1932. The REF extracted thorium and rare earth compounds from ore, a process that produced mill tailings.

B. The mill tailings produced by the REF contained radionuclides, which are hazardous substances under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These mill tailings are classified as "11(e)(2) byproduct material" ("byproduct material") under the Atomic Energy Act, 42 U.S.C. § 2014(c)(2).

C. The REF received a license from the United States Atomic Energy Commission in 1956, and continued operations until 1973. Settling Defendant currently is the licensee of the REF under the Illinois Emergency Management Agency/Division of Nuclear Safety ("IEMA/DNS") License STA-583. The REF is an "active thorium processing site" as that term is defined at 42 U.S.C. § 2296a-3(1). Settling Defendant presently is decontaminating and decommissioning the REF under the regulations and supervision of the IEMA/DNS. The IEMA/DNS has jurisdiction to supervise this work because Illinois is an "agreement state" under Section 274 of the Atomic Energy Act, 42 U.S.C. § 2021.

D. During the course of the operations of the REF, byproduct material was transported to and disposed of at properties in the vicinity of the REF. These vicinity properties include: (i) residential areas in the City of West Chicago ("West Chicago") and DuPage County, Illinois; (ii) Reed-Koppler Park ("RKP") in West Chicago, Illinois; (iii) Kress Creek and the West Branch DuPage River ("Kress Creek") in DuPage County, Illinois; and (iv) the sewage treatment plant ("STP") in West Chicago and DuPage County, Illinois.

E. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA") placed the four above-referenced vicinity sites on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on the following dates: (i) for the residential areas site and the RKP and STP sites, August 30, 1990, 55 Fed. Reg. 35502; and (ii) for the Kress Creek site, February 11, 1991, 56 Fed. Reg. 5598. The four sites collectively are known as the Kerr-McGee West Chicago NPL Sites.

F. Under the authority of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA issued Unilateral Administrative Orders ("UAOs") to Settling Defendant on November 18, 1994, and September 26, 1996, for the performance, respectively, of a non-time-critical removal action at the Residential Areas Site ("RAS") and a time-critical removal action at the RKP Site.

G. Settling Defendant commenced on-site clean-up work at the RAS in 1995. The work is continuing. As of March 1, 2005, Settling Defendant had performed clean-up work under the RAS UAO on 675 properties and had removed 110,871 loose cubic yards of radioactively-contaminated materials from the RAS.

H. Settling Defendant commenced on-site clean-up work at the RKP Site in 1997 and that work is now complete. Settling Defendant removed 114,652 loose cubic yards of radioactively-contaminated materials from the RKP Site.

I. In July 2003 and March 2002, EPA completed Remedial Investigation ("RI") Reports for the RAS and the RKP Site, respectively. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, on July 21, 2003, and on May 5, 2002, EPA published notice of the proposed plans for remedial action at the RAS and the RKP Site, respectively, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the

public on the proposed plans for remedial action. A copy of the transcripts of the public meetings is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response actions for the RAS and the RKP Site.

J. The decision by EPA on the remedial action to be implemented at the RAS is embodied in a Record of Decision ("ROD") executed on September 29, 2003, on which the State of Illinois ("State") has given its concurrence. The remedy selected is no further action after completion of the non-time-critical removal action. EPA determined that the completion of the ongoing removal action will protect human health and the environment and will eliminate the need to conduct further response action at the RAS. The RAS ROD included a responsiveness summary to the public comments. Notice of the final plan will be published in accordance with Section 117(b) of CERCLA.

K. The decision by EPA on the remedial action to be implemented at the RKP Site is embodied in a Record of Decision executed on September 13, 2002, on which the State has given its concurrence. The remedy selected is no further action and groundwater monitoring to ensure that future concentrations of total uranium in the RKP Site groundwater meet the Maximum Contaminant Level ("MCL") drinking water standard of 30 micrograms per liter ("ug/L"). EPA determined that all action necessary to protect human health and the environment had been taken with respect to the soils but that additional groundwater monitoring to ensure compliance with the MCLs was necessary. The RKP ROD included a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Pursuant to the authority of Sections 104, 106(a), 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, EPA and Settling Defendant entered into an

Administrative Order on Consent ("AOC") effective on October 16, 2003, for the performance of a time-critical removal action at the upland operable unit of the STP Site ("STP Upland OU"). Settling Defendant commenced on-site clean-up work at the STP Upland OU in October 2003. The excavation work is complete. Settling Defendant removed 6,557 loose cubic yards of radioactively-contaminated material from the STP Upland OU. Mitigation and restoration work is continuing.

M. Pursuant to the authority of Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622, EPA and Settling Defendant entered into an AOC effective on November 21, 2003, for the performance of a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the Kress Creek and STP Sites and to develop and evaluate potential remedial alternatives at the Kress Creek Site and the river area of the STP Site (known as the "STP River Operable Unit" or "STP River OU"). The RI and FS reports were completed in May of 2004. EPA also completed a human health risk assessment and an ecological risk assessment at that time.

N. On May 24, 2004, EPA published notice of two proposed plans for remedial action at the Kress Creek and STP Sites in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plans for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response actions for the Kress Creek and STP Sites.

O. The decisions by EPA on the remedial actions to be implemented at the Kress Creek and STP Sites are embodied in two RODs. The State concurred with the RODs by letters dated September 29, 2004. EPA issued the STP ROD on September 30, 2004, signed a

clarifying memo to the STP ROD on March 7, 2005, and issued the Kress Creek ROD on March 24, 2005. The remedies selected for the Kress Creek Site and the STP River OU include excavation of targeted soils and sediments throughout the Kress Creek Site and the STP River OU, off-site disposal of these soils and sediments at a permanent, licensed disposal facility, mitigation and restoration of impacted areas, and monitoring and maintenance of the mitigated/restored areas. The remedy selected for the STP Upland OU is no further action after completion of the ongoing removal action. The RODs included a responsiveness summary to the public comments. In accordance with CERCLA Section 117(b), notice of the STP ROD was published on October 20, 2004, and notice of the Kress Creek ROD will be published.

P. Consistent with Settling Defendant's Radioactive Material License and amendments thereto, Settling Defendant was and is authorized to return to the REF radioactively-contaminated materials removed from the RAS and the RKP, STP and Kress Creek Sites. Materials returned to the REF are prepared for shipping to a disposal facility in Utah licensed to accept Section 11(e)(2) byproduct material.

Q. The response actions that EPA selected for the Kerr-McGee West Chicago NPL Sites are protective of human health and the environment, are consistent with the National Contingency Plan ("NCP"), and are based upon the standards under the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"), 42 U.S.C. § 7901 et seq., the regulations promulgated thereunder at 40 C.F.R. Part 192, and the Illinois Source Material Milling Facilities Licensing regulations at 32 Ill. Admin. Code Part 332.

R. Based on the information presently available to EPA and the State, EPA and the State believe that the Work required under this Consent Decree will be properly and promptly

conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

S. Solely for the purposes of Section 113(j) of CERCLA, the remedial action selected in the RODs related to the Kerr-McGee West Chicago NPL Sites and the Work to be performed by Settling Defendant shall constitute response actions taken or ordered by the President.

T. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), the Department of the Interior ("DOI") was notified of negotiations under this Consent Decree regarding the release of hazardous substances that may have resulted in injury to natural resources under Federal trusteeship. DOI participated in the negotiation of this Consent Decree.

U. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), the State of Illinois was notified of negotiations under this Consent Decree regarding the implementation of remedial design and remedial action for the Kress Creek and STP Sites, and of negotiations regarding injury to natural resources. The State was provided an opportunity to participate in such negotiations and be a party to this Consent Decree and the State has joined this Decree as a party.

V. The United States, the State, and the Settling Defendant agree that it is appropriate for Settling Defendant to resolve its alleged liability under Section 107 of CERCLA, 42 U.S.C. § 9607, for natural resource damages relating to the RKP, Kress Creek, and STP Sites, by implementing the Conceptual Mitigation and Restoration Design Plan that is attached to this Consent Decree as Appendix A, by undertaking additional restoration and enhancement activities to be determined by the Forest Preserve District of DuPage County in and adjacent to the Forest Preserve property, by reimbursing the State for up to \$100,000 for costs incurred in reviewing

and overseeing plans and work related to natural resources mitigation and restoration, and by paying DOI \$200,000 to fund activities that promote restoration or enhancement of those areas of the streambank or in-stream environment of the West Branch DuPage River or Kress Creek that are outside the footprint of the remedial activity undertaken at the Kress Creek Site and the STP River OU in order to compensate for natural resource impacts caused by the remedial activity.

W. The United States, on behalf of EPA and DOI, and the State, on its own motion and at the request of the Illinois Environmental Protection Agency ("IEPA") and the Illinois Department of Natural Resources ("IDNR"), filed a complaint in this matter pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, seeking commencement and/or completion (as appropriate) of the response actions at the Kerr-McGee West Chicago NPL Sites, costs incurred, and natural resource damages.

X. Settling Defendant does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Sites constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

Y. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith; that implementation of this Consent Decree will expedite the clean-up of the Kerr-McGee West Chicago NPL Sites and the restoration or replacement of the natural resources that the United States and the State assert have been or will be injured, destroyed, or lost; that this settlement will avoid prolonged and complicated litigation between the Parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the Settling Defendant with respect to the Kerr-McGee West Chicago NPL Sites or the Work. Settling Defendant shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Byproduct Material” shall have the meaning assigned to it under Section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. § 2014(e)(2).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Conceptual Mitigation and Restoration Design Plan” or “Mitigation and Restoration Plan” shall mean the document attached hereto as Appendix A.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal or State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOE” shall mean the United States Department of Energy and any successor departments or agencies of the United States.

“DOP” shall mean the United States Department of the Interior and any successor departments or agencies of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 117.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Feasibility Study” shall have the meaning assigned to it at 40 C.F.R. § 300.430(e).

“Final Design/Remedial Action Work Plan” or “FD/RA Work Plan” shall mean the document(s) developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

“Future Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs after September 30, 2003, in reviewing or developing plans, reports, and other items pursuant to the RKP UAO, the RAS UAO, the STP Upland OU AOC, the RI/FS AOC, and/or this Consent Decree, verifying the work under the RKP UAO, the RAS UAO, the STP Upland OU AOC, the RI/FS AOC, and/or this Consent Decree, or otherwise implementing, overseeing, or enforcing the RKP UAO, the RAS UAO, the STP Upland OU AOC, the RI/FS AOC, and/or this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls, including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional

controls including, but not limited to, the amount of just compensation), XIV (Emergency Response), and Paragraph 98 of Section XXI (Work Takeover).

"IDNR" shall mean the Illinois Department of Natural Resources and any successor departments or agencies of the State.

"IEMA/DNS" shall mean the Illinois Emergency Management Agency, Division of Nuclear Safety and any successor departments or agencies of the State.

"IEPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Interest Earned" shall mean interest earned on amounts in the Kerr-McGee West Chicago Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"Kerr-McGee West Chicago NPL Sites" or "Sites" shall mean the Residential Areas Site ("RAS"), the Reed-Keppeler Park Site (the "RKP Site"), the Kress Creek Site (the "Kress Creek Site"), and the Sewage Treatment Plant Site (the "STP Site").

"Kerr-McGee West Chicago Special Account" shall mean the special account to be established by EPA for the Kerr-McGee West Chicago NPL Sites pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

“Kress Creek Site” shall mean the Kerr-McGee Kress Creek/West Branch of DuPage River Superfund Site, encompassing the following areas in DuPage County: Kress Creek from the storm sewer outfall located on the east side of the Elgin-Joliet and Eastern Railway to Kress Creek’s confluence with the West Branch DuPage River; and the West Branch DuPage River from its confluence with Kress Creek to the McDowell Dam. The Kress Creek Site is depicted generally on the map attached as Appendix B.

“Kress Creek Site Record of Decision” or “Kress Creek ROD” shall mean the EPA Record of Decision relating to the Kress Creek Site signed on March 24, 2005, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The Kress Creek ROD is attached as Appendix C.

“Local Communities” shall mean the City of West Chicago, the City of Warrenville, the County of DuPage, the Forest Preserve District of the County of DuPage, and the West Chicago Park District.

“Mitigation and Restoration Plan” or “Conceptual Mitigation and Restoration Design Plan” shall mean the document attached hereto as Appendix A.

“Mitigation and Restoration Work” or “Natural Resources Mitigation and Restoration Work” shall mean the work that Settling Defendant is required to perform pursuant to Paragraph 15 of this Consent Decree.

“Municipal sewage sludge” shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

“Municipal solid waste” shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Natural Resources” shall have the meaning assigned to it under Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean damages recoverable by the United States and the State on behalf of the public under Section 107 of CERCLA for injury to, destruction of, or loss or impairment of natural resources at the RKP, Kress Creek, and STP Sites, as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

“Natural Resources Mitigation and Restoration Work” or “Mitigation and Restoration Work” shall mean the work that Settling Defendant is required to perform pursuant to Paragraph 15 of this Consent Decree.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parent Companies" shall mean Kerr-McGee Chemical Worldwide LLC, Kerr-McGee Worldwide Corporation, and Kerr-McGee Corporation (incorporated May 2002).

"Parties" shall mean the United States, the State of Illinois and the Settling Defendant.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurred at or in connection with the Kerr-McGee West Chicago NPL Sites through September 30, 2003, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards for the Kress Creek Site" and "Performance Standards for the STP Site" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action for the Kress Creek and STP Sites, as set forth in Sections 8.1 and 12.2 of the Kress Creek and STP RODs, and Section 3.3.1 of the SOW.

"Performance Standards for the RAS" shall have the meaning assigned to it under Paragraph 5.0 of the RAS UAO.

"Performance Standards in the RKP ROD" shall mean the cleanup standards and other measures of achievement for the RKP Site set forth in Section 2.8 of the RKP ROD, and Section 5.1 of the SOW.

"Plaintiffs" shall mean the United States and the State of Illinois.

"Predecessor Companies" shall mean Lindsay Light Company, Lindsay Light & Chemical Company, American Potash & Chemical Corporation (incorporated 1927) AMPOT, Inc., American Potash & Chemical Corporation (incorporated 1967); Kerr-McGee Corporation, Kerr-McGee Chemical Corp., and Kerr-McGee Chemical Corporation.

“RAS” or “Residential Areas Site” shall mean the Kerr-McGee Residential Areas Superfund Site in West Chicago and DuPage County, Illinois, encompassing all properties at which Settling Defendant has performed and/or will perform work pursuant to the RAS UAO. The properties constituting the RAS are the 676 properties listed in Appendix D and any additional properties at which Settling Defendant is required to perform work under the RAS UAO.

“RAS Record of Decision” or “RAS ROD” shall mean the EPA Record of Decision relating to the RAS signed on September 29, 2003, by the Director of the Superfund Division, EPA Region 5, and all attachments thereto. The RAS ROD is attached as Appendix E.

“RAS UAO” shall mean the Unilateral Administrative Order involving the RAS issued to Settling Defendant on November 18, 1994, with a docket number of V-W-95-C-272. The RAS UAO is attached as Appendix F.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“REF” or “Rare Earths Facility” shall mean the facility operated by Settling Defendant and its predecessors from approximately 1932 until 1973 at 248 Ann Street, West Chicago, DuPage County, Illinois.

“Remedial Action” shall mean those activities, including monitoring, to be undertaken by the Settling Defendant to implement the RAS, RKP, STP, and Kress Creek RODs, in accordance with the SOW and the plans approved by EPA pursuant to this Consent Decree.

“Remedial Design” shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for Remedial Action.

"Remedial Investigation" or "RI" shall have the meaning assigned to it pursuant to 40 C.F.R. § 300.430(d).

"RI/FS AOC" or "RI/FS Administrative Order on Consent" shall mean the Administrative Order on Consent involving the Kress Creek and STP Sites that U.S. EPA and Settling Defendant entered into effective November 21, 2003, with a docket number of V-W-04-C-767. The RI/FS AOC is attached as Appendix G.

"RKP Record of Decision" or "RKP ROD" shall mean the EPA Record of Decision relating to the RKP Site signed on September 13, 2002, by the Director of the Superfund Division, EPA Region 5, and all attachments thereto. The RKP ROD is attached as Appendix H.

"RKP Site" or "Reed-Keppler Park Site" shall mean the Kerr-McGee Reed-Keppler Park Superfund Site, encompassing an approximately one hundred acre community park widely known as the Reed-Keppler Park, located in the northwestern portion of West Chicago, Illinois, and depicted generally on the map attached as Appendix I.

"RKP UAO" shall mean the Unilateral Administrative Order involving the RKP Site issued to Settling Defendant on September 26, 1996, with a docket number of V-W-96-C-364. The RKP UAO is attached as Appendix J.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Service Affiliates" shall mean Kerr-McGee Environmental Management Corporation and Kerr-McGee Shared Services Company, LLC.

"Settling Defendant" shall mean Kerr-McGee Chemical, LLC.

"Settling Defendant's Related Persons" shall mean: (1) the former or current officers, directors, shareholders, or employees of Settling Defendant, but only to the extent that the alleged liability of such person is based upon acts and/or omissions which occurred in the scope

of the person's employment with Settling Defendant or in his/her capacity as an officer, director, shareholder, or employee of Settling Defendant; (2) the Parent and Predecessor Companies; (3) the former or current officers, directors, shareholders, or employees of the Parent and Predecessor Companies, but only to the extent that the alleged liability of such person is based upon acts and/or omissions which occurred in the scope of the person's employment with the Parent and/or Predecessor Company or in his/her capacity as an officer, director, shareholder, or employee of the Parent and/or Predecessor Company; (4) the Service Affiliates, but only to the extent that the work they have performed or will perform at the Sites has been or will be consistent with work plans approved by EPA; (5) the former or current officers, directors, shareholders, or employees of the Service Affiliates, but only to the extent that the alleged liability of such person: (i) is based upon acts and/or omissions which occurred in the scope of the person's employment with the Service Affiliate or in his/her capacity as an officer, director, shareholder, or employee of the Service Affiliate; and (ii) the work he/she has performed or will perform at the Sites has been or will be consistent with work plans approved by EPA.

"Sites" or "Kerr-McGee West Chicago NPL Sites" shall mean the Residential Areas Site ("RAS"), the Reed-Keppler Park Site (the "RKP Site"), the Kress Creek/West Branch of DuPage River Site (the "Kress Creek Site"), and the Sewage Treatment Plant Site (the "STP Site").

"State" shall mean the State of Illinois.

"State Costs" shall mean the costs that the State incurs in reviewing and overseeing Natural Resources Mitigation and Restoration Work; it shall not mean any costs that Settling Defendant reimburses to IEMA/DNS for oversight and verification work.

“Statement of Work” or “SOW” shall mean the statement of work set forth in Appendix K of this Consent Decree for groundwater monitoring at the RKP Site and for implementing the Remedial Design and Remedial Action at the STP and Kress Creek Sites.

“STP Site” or “Sewage Treatment Plant Site” shall mean the Kerr-McGee Sewage Treatment Plant Superfund Site located in West Chicago and DuPage County, Illinois, which encompasses: (i) the West Chicago Sewage Treatment Plant located adjacent to the West Branch DuPage River at Illinois Routes 59 and 38, Sarana Drive, West Chicago, Illinois; and (ii) the West Branch DuPage River from the northern boundary of the West Chicago Sewage Treatment Plant to the West Branch’s confluence with Kress Creek. The Site is depicted generally on the map attached as Appendix L.

“STP Record of Decision” or “STP ROD” shall mean the EPA Record of Decision relating to the STP Site signed on September 30, 2004, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The STP ROD is attached as Appendix M.

“STP Record of Decision Clarifying Memorandum to File” or “STP ROD Clarifying Memo to File” shall mean the Memorandum dated March 7, 2005, and attached as Appendix N.

“STP River OU” or “Sewage Treatment Plant River Operable Unit” shall mean the West Branch DuPage River from the northern boundary of West Chicago’s Sewage Treatment Plant to the West Branch’s confluence with Kress Creek. The STP River OU excludes those portions of the STP Site that are encompassed within the definition of the STP Upland OU.

“STP Upland OU” or “Sewage Treatment Plant Upland Operable Unit” shall mean the approximately 25 acres where the West Chicago Sewage Treatment Plant is located at Illinois Routes 59 and 38, Sarana Drive in the City of West Chicago. The eastern boundary of the STP

Upland OU is designated by a line of dashes set forth on the map attached as Appendix O, except however, that the eastern portion of the STP Upland OU also includes the bank area where Waste Materials are or were located around or beneath the West Chicago Sewage Treatment Plant NPDES discharge pipe and the City of West Chicago storm sewer discharge pipe as they enter the West Branch DuPage River.

“STP Upland OU AOC” or “STP Upland OU Administrative Order on Consent” shall mean the Administrative Order on Consent involving the STP Upland OU that U.S. EPA and Settling Defendant entered into effective October 16, 2003, with a docket number of V-W-04-C-762. The STP Upland OU AOC is attached as Appendix P.

“Supervising Contractor” shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

“Title X” shall mean Title X of the Energy Policy Act of 1992, 42 U.S.C. §§ 2296a through 2296b-7.

“UMTRCA” shall mean the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 *et seq.*

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and (4) any “hazardous material” under Section 3.125 of the Illinois Environmental Protection Act, 415 ILCS 5/3.125 (2002).

“Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Sites by the design and implementation of response actions, to reimburse response costs of the United States, to reimburse State Costs of the State, to mitigate and restore injured natural resources, and to resolve the claims of Plaintiffs against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA and DOI (as applicable) and the State (as applicable) pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs and shall reimburse the State for State Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the RAS UAO, the STP Upland OU AOC, the RKP, STP, and Kress Creek RODs, and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with CERCLA, the NCP, UMTRCA, the regulations promulgated under UMTRCA at 40 C.F.R. Part 192, and the Illinois Source Material Milling Facilities Licensing regulations at 32 Ill. Admin. Code Part 332.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

9. Selection of Supervising Contractor.

a. Settling Defendant has selected, and EPA has approved, a supervising contractor known as Blasland, Bouck & Lee, Inc. ("BBL"). BBL shall direct and supervise the performance of the Work required by this Decree, including the Work pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XIV (Emergency Response). At its option and after notification to EPA, Settling Defendant may itself act as the Supervising Contractor at any time during the performance of Work under this Decree.

b. If Settling Defendant decides to retain a supervising contractor other than BBL or itself to perform any Work required by this Decree, Settling Defendant shall notify EPA

of the name and qualifications of such contractor and must obtain an authorization to proceed from U.S. EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. With respect to any contractor proposed to be Supervising Contractor, Settling Defendant shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA.

c. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to Settling Defendant within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

10. General Information and Pre-Remedial Design for the Kress Creek Site and the STP River OU.

a. General. Cleanup of the Kress Creek Site and the STP River OU will proceed sequentially from upstream to downstream. The Kress Creek Site and the STP River OU collectively will be segmented into eight "reaches," reflecting eight different segments of Kress Creek and the West Branch DuPage River. With the exception of some common scoping and planning documents, Settling Defendant will not prepare a single, comprehensive Remedial Design for all eight reaches, but rather, will submit a series of Remedial Design and Remedial Action plans, each covering one or more reaches, as appropriate. The Remedial Action likewise will proceed reach-by-reach. As Remedial Action is implemented in the upstream reaches, Remedial Design activities may be performed concurrently in downstream reaches.

b. Common Scoping and Planning Documents. On October 7, 2004, Settling Defendant submitted scoping and planning documents that are common to the Remedial Action for all eight reaches ("Common Scoping and Planning Documents"). The Common Scoping and Planning Documents are: the Quality Assurance Project Plan/Field Sampling Plan ("QAPP/FSP"); the Construction Quality Assurance Plan ("CQAP"); the Health and Safety Plan ("HASP"); and the Emergency Contingency Plan. Settling Defendant shall review all components of these Common Scoping and Planning Documents annually and shall submit any proposed modifications for review and approval in accordance with Section XI of this Consent Decree prior to their implementation.

c. Pre-Design Investigation Work Plans. On May 19, 2004, and September 24, 2004, Settling Defendant submitted a reach-specific Pre-Design Investigation ("PDI") Work Plan in accordance with the requirements of the SOW for Reaches 1 through 5A

and 5B. By the date set forth in the SOW, Settling Defendant shall submit a subsequent reach-specific PDI Work Plan for the next reach that Settling Defendant proposes to remediate, until Settling Defendant has submitted PDI Work Plans covering all eight reaches.

d. Performance of Pre-Design Field Work. By the date set forth in the SOW, Settling Defendant shall initiate performance of the work required in each PDI Work Plan and shall perform the work in accordance with the schedule(s) in the approved PDI Work Plan.

11. Final Design/Remedial Action Work Plan for the Kress Creek Site and the STP River OU. On October 7, 2004, Settling Defendant submitted a Final Design/Remedial Action ("FD/RA") Work Plan in accordance with the requirements of the SOW for a portion of Reach 5A. By the date set forth in the SOW, Settling Defendant shall submit a subsequent reach-specific FD/RA Work Plan for the next reach, or portion thereof, that Settling Defendant proposes to remediate, until Settling Defendant has submitted FD/RA Work Plans covering all eight reaches. The FD/RA Work Plans shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards in accordance with this Consent Decree, the ROD, and the SOW.

12. Remedial Action for the Kress Creek Site and the STP River OU. By the date set forth in the SOW, Settling Defendant shall implement the activities required in the FD/RA Work Plan. Settling Defendant shall undertake all activities required in the approved FD/RA Work Plan and shall submit all plans, submissions, or other deliverables required in the approved FD/RA Work Plan in accordance with the approved schedule. Unless otherwise directed by EPA, Settling Defendant shall not commence physical Remedial Action at any reach within the Kress Creek Site or the STP River OU prior to approval of the FD/RA Work Plan for that reach.

13. Settling Defendant shall continue to implement the Remedial Action at the Kress Creek Site and the STP River OU until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Groundwater Monitoring at the RKP Site. Consistent with the RKP ROD and the SOW, Settling Defendant shall monitor the RKP Site groundwater to ensure that future concentrations of uranium meet the Maximum Contaminant Level ("MCL") drinking water standard of 30 ug/L. The monitoring will continue until Settling Defendant demonstrates that the MCLs have been achieved and maintained for three consecutive sampling events. Settling Defendant shall comply with the monitoring and sampling requirements in Section 5.1 of the SOW in implementing this action. By the date set forth in the SOW, Settling Defendant shall submit the following scoping and planning documents to provide the details regarding the groundwater monitoring activities at the RKP Site: the Work Plan; the QAPP/FSP; the IIASP; and the Emergency Contingency Plan.

15. Natural Resources Mitigation and Restoration Work.

a. Implementation of Conceptual Mitigation and Restoration Design Plan.

Settling Defendant shall perform and fully fund detailed design, mitigation, and restoration activities consistent with the Conceptual Mitigation and Restoration Design Plan attached hereto as Appendix A and in accordance with the requirements in the SOW. Detailed mitigation/restoration proposals submitted after the Effective Date shall be subject to the review and approval of EPA, DOI, and the State trustees, pursuant to Section XI of this Decree (EPA, DOI, and State Approval of Plans and Other Submissions). Kerr-McGee may initiate Mitigation and Restoration Work for one or more reaches, including monitoring, before initiating remedial work at one or more downstream reaches.

b. Forest Funding. Settling Defendant shall undertake additional restoration and enhancement activities to be determined by the Forest Preserve District of DuPage County in and adjacent to the Forest Preserve District's property. The value of these additional activities shall be derived from a formula agreed upon between Settling Defendant and the DuPage County Forest Preserve using as factors the total diameter inches of desirable trees sacrificed in response activities and the total diameter inches of trees planted as part of the Mitigation and Restoration Plan.

c. Streambank and In-Stream Restoration Funding. Within 30 days of the Effective Date, Settling Defendant shall pay to DOI's Natural Resource Damage Assessment and Restoration Program ("NRDARP") \$200,000 exclusively to fund activities that promote restoration or enhancement of those areas of the streambank or in-stream environment of the West Branch DuPage River or Kress Creek that are outside the footprint of the Remedial Action undertaken at the Kress Creek Site and STP River OU. DOI, in consultation with the State and the Forest Preserve District of DuPage County, will have exclusive authority over the nature of the projects that will be undertaken. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that payment has been made to the United States and to the Fish and Wildlife Service in accordance with Section XXVI (Notices and Submissions). Notice of this payment shall also be sent to:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, DC 20240

16. Modification of the SOW, Related Work Plans, or Other Submissions.

a. If EPA and DOI (with respect to Natural Resources Mitigation and Restoration Work) determine that modification to the work specified in the SOW and/or in work plans and/or other submissions developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards, to carry out and maintain the effectiveness of the remedy set forth in the RODs, or to satisfy the requirements of the Mitigation and Restoration Plan, EPA and DOI (if applicable) may require that such modification be incorporated in the SOW and/or such work plans and/or such other submissions; provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the RODs and/or with the requirements of the Mitigation and Restoration Plan.

b. If Settling Defendant objects to any modification determined by EPA and DOI (if applicable) to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 71 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

17. Completion of the Removal Action at the RAS. Kerr-McGee will complete the ongoing non-time-critical removal action at the RAS pursuant to the requirements of UAO V-W-95-C-272, and consistent with the RAS ROD.

18. Completion of the Removal Action at the STP Upland OU. Kerr-McGee will complete the ongoing time-critical removal action at the STP Upland OU pursuant to the requirements of AOC V-W-04-C-762, and consistent with the STP ROD.

19. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the submissions made pursuant to this Consent Decree constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW or the Consent Decree submissions will achieve the Performance Standards in the UAOs or RODs for the Sites except that Plaintiffs acknowledge that certain work requirements in the SOW regarding excavation of targeted materials function as Performance Standards so that compliance with those work requirements necessarily achieves those Performance Standards.

20. Off-Site Shipments.

a. Radioactive Waste Materials.

(1) Settling Defendant has advised U.S. EPA that it intends to transport radioactive Waste Material from the Kress Creek Site and the STP River OU to the REF. These materials then will be shipped by railroad from the REF to Envirocare of Utah, Inc. ("Envirocare"), a disposal facility in Clive, Utah licensed to accept radioactive Waste Material from the Kress Creek Site and the STP River OU. Prior to the initial shipment of radioactive Waste Material originating from the Kress Creek Site and the STP River OU, Settling Defendant

shall provide written notification of such shipment to the appropriate Utah state environmental official and to the Remedial Project Manager ("RPM"). Settling Defendant shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Settling Defendant shall notify Utah of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. This notification requirement shall apply to the first off-Site shipment where the total volume equals or exceeds 10 cubic yards.

(2) If an additional facility(ies) for the disposal of radioactive Waste Material from the Kress Creek Site or the STP River OU become(s) licensed to receive such material prior to Settling Defendant's disposal of all of the radioactive Waste Material from the Kress Creek Site and the STP River OU, and if Settling Defendant elects to utilize such other facility(ies), Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Defendant shall send hazardous substances, pollutants, or contaminants from the Kress Creek Site and the STP River OU only to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. If Settling Defendant is able, and elects, to use a disposal facility different from Envirocare, Settling Defendant shall comply with the terms and conditions of the notification requirements of Paragraph 20.a(1) for each such other disposal facility that Respondent utilizes.

b. Other than Radioactive Waste Materials. If Kerr-McGee encounters hazardous substances in the course of conducting the Remedial Action, then before shipping any hazardous substances, pollutants, or contaminants (other than radioactive Waste Materials) to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Consistent with the requirements of off-site shipments for radioactive Waste Materials, Settling Defendant shall send hazardous substances, pollutants, or contaminants (other than radioactive Waste Materials) from the Kress Creek Site and the STP River OU only to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence. Settling Defendant shall comply with the terms and conditions of the notification requirements of Paragraph 20.a(1) for each such disposal of non-radioactive hazardous substances, pollutants, and contaminants that Settling Defendant ships. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

VII. REMEDY REVIEW

21. Periodic Review. Settling Defendant shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121 (c) of CERCLA and any applicable regulations.

22. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action for a particular Site is not protective of human health and the environment, EPA may select further response actions with respect to the Site(s) in question in accordance with the requirements of CERCLA, the NCP, UMTRCA, the regulations promulgated under

UMTRCA at 40 C.F.R. Part 192, and the Illinois Source Material Milling Facilities Licensing regulations at 32 Ill. Admin. Code Part 332.

23. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

24. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for a particular Site, Settling Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 87 or Paragraph 88 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 87 or Paragraph 88 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the response action for a particular Site is not protective of human health and the environment, and/or (3) EPA's selection of the further response actions. Disputes pertaining to the issue of whether the response action for a particular Site is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 71 (record review).

25. Submissions of Plans. If Settling Defendant is required to perform further response actions pursuant to Paragraph 24, Settling Defendant shall submit a plan for such work to EPA for approval and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

26. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, UMTRCA, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to the QAPP approved by EPA and participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall use only laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National

Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

27. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendant shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA or sample collection is a regularly-scheduled activity in the plans approved pursuant to this Decree. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow Settling Defendant to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendant's implementation of the Work.

28. Settling Defendant shall submit to EPA and the State electronic copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Kerr-McGee West Chicago Sites and/or the implementation of this Consent Decree unless EPA specifies otherwise.

29. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

30. With respect to the REF, Settling Defendant shall, commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and their contractors, with access at all reasonable times, but subject to license conditions pertaining to restricted areas, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, or implementing additional response actions at or near the Kerr-McGee West Chicago NPL Sites;
- (5) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraph 98 of this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIV (Access to Information); and
- (8) Assessing Settling Defendant's compliance with this Consent Decree.

31. With respect to the Kerr-McGee West Chicago NPL Sites and any other property where access and/or restrictions are or may be needed to implement this Consent Decree, Settling Defendant shall use best efforts to secure from persons who own or control any such property:

- a. an agreement to provide access thereto for Settling Defendant, as well as for the United States, on behalf of EPA and DOI, and the State, as well as their representatives

(including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 30 of this Consent Decree and the following activities: (1) conducting investigations relating to contamination at or near the Kerr-McGee West Chicago NPL Sites; and (2) determining whether the Kerr-McGee West Chicago NPL Sites or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. an agreement, if and only to the extent necessary, enforceable by Settling Defendant and the United States, to refrain from using the Kerr-McGee West Chicago NPL Sites, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree;

c. if EPA so requests, and only to the extent necessary, the execution and recordation in the Recorder's Office (or Registry of Deeds or other appropriate land records office) of DuPage County, State of Illinois, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraphs 30 or 31.a of this Consent Decree, and (ii) grants the right to enforce restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendant and its representatives, and/or (iv) other appropriate grantees.

d. Limited to the circumstances described in Subparagraph 31.c, EPA may request Settling Defendant to submit to EPA for review and approval with respect to such property:

- (1) A draft easement that is enforceable under the laws of the State of Illinois, and
- (2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Settling Defendant shall submit these items within 45 days of a request. Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Recorder's Office (or Registry of Deeds or other appropriate office) of DuPage County. Within 30 days of the recording of the easement, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

32. For purposes of Paragraph 31 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access and/or use restriction agreements required by Paragraphs 31.a or

31.b of this Consent Decree are not obtained within 45 days of the date of Kerr-McGee's first attempt to secure any such agreement, (b) any access easements or restrictive easements required by Paragraph 31.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of a request by EPA, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 31.c from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of a request by EPA, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 31 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XV (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

33. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedies selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

34. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

35. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA, DOI, and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA and DOI (if applicable) or that have been approved by EPA and DOI (if applicable); and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA, DOI, and the State by the tenth day of every month following the lodging of this Consent Decree until the date of

EPA's notification pursuant to Paragraph 54.b of Section XIV (Certification of Completion) for the final Site that is completed. If requested by EPA or the State, Settling Defendant shall also provide briefings for EPA and the State to discuss the progress of the Work.

36. Settling Defendant shall notify EPA, DOI, and the State of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

37. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Branch, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

38. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiffs a written report, signed by Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

39. Settling Defendant shall submit to EPA, DOI, and the State copies, in electronic form, of all technical plans, reports, and data required under this Consent Decree, the SOW, or

any plans submitted to and approved by EPA and DOI (if applicable) and the State (if applicable) pursuant to this Consent Decree in accordance with the schedules set forth in such plans. Upon request by EPA or DOI or the State, Settling Defendant shall provide hard copies as needed.

40. All reports and other documents submitted by Settling Defendant to EPA, DOI, and the State (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

XI. EPA, DOI, AND STATE APPROVAL OF PLANS AND OTHER SUBMISSIONS

41. For any plan, report, or other items which is required to be submitted under this Consent Decree for approval, EPA's approval always shall be required. For any plan, report, or other item which is related to natural resource mitigation or restoration and which requires approval, DOI's and the State's approval also shall be required. EPA, DOI, and the State shall coordinate with each other in issuing approvals, requests for modifications, disapprovals, and/or comments under this Section.

42. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA and DOI (if applicable) and the State (if applicable) shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, EPA and DOI (if applicable) and the State (if applicable) shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due

to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

43. In the event of approval, approval upon conditions, or modification by EPA and DOI (if applicable) and the State (if applicable), pursuant to Subparagraph 42(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA and DOI (if applicable) and the State (if applicable) subject only to Settling Defendant's right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA and DOI (if applicable) and the State (if applicable). In the event that EPA and DOI (if applicable) and the State (if applicable) modify the submission to cure the deficiencies pursuant to Paragraph 42(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

44. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 42(d), Settling Defendant shall, within 21 days or such longer time as specified by EPA and DOI (if applicable) and the State (if applicable) in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 45 and 46. However, no stipulated penalties shall accrue if the failure to resubmit is caused by a force majeure event.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 42(d), Settling Defendant shall proceed, at the direction of EPA and DOI (if

applicable) and the State (if applicable), to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

45. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA and DOI (if applicable) and the State (if applicable), EPA and DOI (if applicable) and the State (if applicable) may again require Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA and DOI (if applicable) and the State (if applicable) also retain the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA and DOI (if applicable) and the State (if applicable), subject only to Settling Defendant's right to invoke the procedures set forth in Section XIX (Dispute Resolution).

46. If upon resubmission, a plan, report, or item is disapproved or modified by EPA and DOI (if applicable) and the State (if applicable) due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendant invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's and DOI's (if applicable) and the State's (if applicable) action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution.

47. All plans, reports, and other items required to be submitted to EPA and DOI (if applicable) and the State (if applicable) under this Consent Decree or SOW shall, upon approval or modification by EPA and DOI (if applicable) and the State (if applicable), be enforceable

under this Consent Decree. In the event EPA and DOI (if applicable) and the State (if applicable) approve or modify a portion of a plan, report, or other item required to be submitted to EPA and DOI (if applicable) and the State (if applicable) under this Consent Decree or SOW, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

48. EPA's Project Coordinator is:

Rebecca Frey
Remedial Project Manager
EPA Region 5
77 W. Jackson Blvd.
Mail Code SR-6J
Chicago, IL 60604
(312) 886-4760

EPA's Alternate Project Coordinator is:

Scott Hansen
Remedial Project Manager
EPA Region 5
77 W. Jackson Blvd.
Mail Code SR-6J
Chicago, IL 60604
(312) 886-1999

DOI's Project Coordinator is:

John Rogner
Supervisor, Chicago Field Office
United States Fish and Wildlife Service
1250 S. Grove Ave.
Suite 103
Barrington, IL 60010
(847) 381-2253 (x 212)

Settling Defendant's Project Coordinator is:

Mark Krippel
Kerr-McGee Chemical LC
800 Weyrauch St.
West Chicago, IL 60195
(630) 293-6331

Settling Defendant's Alternate Project Coordinator is:

Mike Logan
Chemical & Nuclear Environmental Remediation
Safety & Environmental Affairs Division
Kerr-McGee Corporation
123 Robert S. Kerr Avenue
Oklahoma City, OK 73102
(405) 270-2699

Illinois EPA Project Coordinator is:

Thomas C. Williams
NPL Unit
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 1515
LaSalle, Illinois 61301-3515
(815) 223-1714

Illinois Department of Natural Resources Project Coordinator is:

Beth Wethsell
Eco-Toxicologist
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
(217) 557-7816

If any of the above-referenced Project Coordinators or Alternate Project Coordinators is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

49. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor

the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Kerr-McGee West Chicago NPL Site in question constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. CERTIFICATIONS OF COMPLETION

50. Completion of the Response Action at the RKP Site

a. After Settling Defendant undertakes three consecutive sampling events that demonstrate that the MCL drinking water standard for total uranium has been achieved and maintained consistent with the requirements in Section 5.1 of the SOW, Settling Defendant shall submit a written report to EPA for approval requesting that the groundwater monitoring at the RKP Site be discontinued. If EPA determines that the groundwater monitoring has not been completed in accordance with this Consent Decree, or that the Performance Standards in the RPK ROD have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the work at the RKP Site and achieve the Performance Standards in the RKP ROD; provided, however, that EPA may require Settling Defendant to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the scope of the remedy selected in the RKP ROD. EPA will set forth in the notice a schedule for performance of

such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA, DOI, and State Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Settling Defendant's right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting discontinuation of the groundwater monitoring at the RKP Site that the work at the RKP Site has been performed in accordance with this Consent Decree and that the Performance Standards in the RKP ROD have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the RKP Groundwater Monitoring for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the RKP Groundwater Monitoring shall not affect Settling Defendant's obligations under this Consent Decree.

51. Completion of the Response Action at the RAS. Consistent with Paragraph 80 of the RAS UAO, the completion of the response action at the RAS shall become effective when EPA notifies the Settling Defendant that the work has been completed. This notice shall constitute the Certification of Completion of the Response Action at the RAS for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the RAS Response Action shall not affect Settling Defendant's obligations under this Consent Decree.

52. Completion of the Response Action at the STP Upland OU. Consistent with Paragraph 64 of the STP Upland OU AOC, the completion of the response action at the STP

Upland OU shall become effective when EPA notifies the Settling Defendant that the work has been completed. This notice shall constitute the Certification of Completion of the Response Action at the STP Upland OU for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Response Action at the STP Upland OU shall not affect Settling Defendant's obligations under this Consent Decree.

53. Completion of the Remedial Action and Natural Resources Mitigation and Restoration Work at the Kress Creek Site and the STP River OU.

a. Within 90 days after Settling Defendant concludes that the Remedial Action and the Natural Resources Mitigation and Restoration Work for the Kress Creek Site and/or the STP River OU have been fully performed and the Performance Standards in the ROD and SOW and the requirements of the Conceptual Mitigation and Restoration Design Plan ("Mitigation and Restoration Plan") related to the Site/OU in question have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, DOI, and the State. Settling Defendant may seek a pre-certification inspection at either the Kress Creek Site or the STP River OU before Settling Defendant has completed the Remedial Action and Mitigation and Restoration Work at both of them. If, after the pre-certification inspection, Settling Defendant believes that the Remedial Action and the Mitigation and Restoration Work related to the Site/OU in question have been fully performed and that the Performance Standards in the ROD and SOW and the requirements of the Mitigation and Restoration Plan for that Site/OU have been attained, Settling Defendant shall submit a written report to EPA, DOI, and the State for approval requesting certification of completion of the Remedial Action and the Mitigation and Restoration Work. Settling Defendant shall submit

this report, with a copy to the State, pursuant to Section XI (EPA, DOI, and State Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, Settling Defendant's Project Coordinator shall state that the Remedial Action and the Mitigation and Restoration Work at the Site/OU in question have been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, DOI, and the State determine that the Remedial Action, the Mitigation and Restoration Work, or any portion thereof, related to the Site/OU in question has not been completed in accordance with this Consent Decree or that the Performance Standards in the ROD and SOW or the requirements of the Mitigation and Restoration Plan related to the Site/OU in question have not been achieved, EPA, DOI, and the State will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and the Mitigation and Restoration Work at the Site/OU in question and achieve the Performance Standards in the ROD and SOW and the requirements of the Mitigation and Restoration Plan for that Site/OU; provided, however, that EPA, DOI, and the State may require Settling Defendant to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the scope of the remedy selected in the ROD and with the requirements of the Mitigation and Restoration Plan for that particular

Site/OU. EPA, DOI, and the State will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree, the SOW, and the Mitigation and Restoration Plan, or require the Settling Defendant to submit a schedule to EPA, DOI, and the State for approval pursuant to Section XI (EPA, DOI, and State Approval of Plans and Other Submissions).

Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to Settling Defendant's right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA, DOI, and the State conclude, based on the initial or any subsequent report requesting Certification of Completion, that the Remedial Action and the Mitigation and Restoration Work for the Site/OU in question have been performed in accordance with this Consent Decree and that the Performance Standards in the ROD and SOW and the requirements of the Mitigation and Restoration Plan for that Site/OU have been achieved, EPA, DOI, and the State will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action and the Mitigation and Restoration Work at that particular Site/OU for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action and the Mitigation and Restoration Work at the Site/OU in question shall not affect Settling Defendant's obligations under this Consent Decree.

XIV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Kerr-McGee West Chicago NPL Sites that constitutes an emergency situation or may present an immediate threat to public health

or welfare or the environment, Settling Defendant shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendant shall notify the EPA Emergency Response Branch, Region 5. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take[s] such action instead, Settling Defendant shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Kerr-McGee West Chicago NPL Sites, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Kerr-McGee West Chicago Sites, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

XV. PAYMENTS FOR RESPONSE COSTS

56. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendant shall pay to EPA \$1.5 million in partial payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004V01740, EPA Site/Spill ID Number 05QS, 05QT, 05QV, 05QW, and DOJ Case Number 90-11-2-07349/1. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. Within 30 days of Settling Defendant's receipt of the final payment from the Department of Energy under the Title X program of the Energy Policy Act of 1992 (42 U.S.C. §§ 2296a - 2296b-7) of the \$49,636,191.24 in reimbursement that the Department of Energy owes to Settling Defendant for claims involving the REF and the Kerr-McGee West Chicago NPL Sites submitted on or before September 30, 2003, Settling Defendant shall pay to EPA \$4.5 million in final payment for Past Response Costs. If final payment from the Department of Energy for claims submitted on or before September 30, 2003, occurs before the Effective Date of this Consent Decree, Settling Defendant's payment to EPA for past response costs due under this Subparagraph 56.c shall be made within 30 days of the Effective Date.

Settling Defendant shall comply with the terms and conditions of Subparagraphs 56.a and 56.b in making this payment. After the lodging of this Consent Decree, and until Settling Defendant makes the payment required by this Subparagraph 56.c, Settling Defendant shall provide written notice to the Department of Justice and EPA's Region 5 Office of Regional Counsel of each payment that it receives from DOE, including the amount received and the balance still owing on the \$49,636,191.24 outstanding reimbursement amount in order to permit anticipation of the timing of payment under this Subparagraph.

d. The total amount to be paid by Settling Defendant pursuant to Paragraph 56 shall be deposited in the Kerr-McGee West Chicago Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Kerr-McGee West Chicago Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

57. Payments for Future Response Costs and State Costs.

a. Future Response Costs Other than Those Specified in Subparagraph 57.c.

For response costs not inconsistent with the National Contingency Plan, incurred after September 30, 2003, and not specified in Subparagraph 57.e, Settling Defendant shall pay to EPA \$1.35 million and 50 percent of any amounts between \$1.35 million and \$2 million. Settling Defendant shall not be required to reimburse EPA for any portion of such response costs in excess of \$2 million. Any EPA costs reimbursed by Settling Defendant pursuant to the RI/FS AOC for the Kress Creek and STP Sites will be credited against the \$1.35 million and \$2 million amounts set forth in this Paragraph.

b. Settling Defendant shall pay the response costs due under the RI/FS AOC for the Kress Creek and STP Sites at the time and in the manner set forth in Section VIII of that AOC.

c. Except for payments required under Section VIII of the RI/FS AOC for the Kress Creek and the STP Sites, on a periodic basis after the Effective Date, the United States will send Settling Defendant a bill requiring payment that includes a cost summary prepared by EPA Region 5. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 58. Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, the applicable EPA Site/Spill ID Number (05QS (Kress Creek Site), 05QT (RKP Site), 05QV (RAS), 05QW (STP Site)), and DOJ Case Number 90-11-2-07349/1. Settling Defendant shall send the check(s) to:

U.S. EPA Superfund Accounting
P.O. Box 70753
Chicago, IL 60673

d. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

e. Future Response Costs to Enforce this Consent Decree or Incurred Pursuant to Sections VII, IX, XIV, or XXI of this Decree. For response costs incurred to enforce this Consent Decree or incurred pursuant to Sections VII, IX, XIV, or XXI of this Consent Decree, that are not inconsistent with the National Contingency Plan, and that are incurred after September 30, 2003, Settling Defendant shall pay all of the United States' response costs, if any.

Payments under this Subparagraph 57.e shall be demanded and made in the same manner specified in Subparagraph 57.c.

f. All Future Response Costs to be paid by Settling Defendant pursuant to Paragraph 57a. through 57e. shall be deposited in the Kerr-McGee West Chicago Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Kerr-McGee West Chicago Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

g. Reimbursement to the State. By no later than 30 days after receipt of a request for reimbursement, Settling Defendant shall reimburse the State for the costs it incurs in reviewing and overseeing Natural Resources Mitigation and Restoration Work ("State Costs"). Settling Defendant shall not be required to reimburse any such State Costs in excess of \$100,000. Payment and mailing instructions will be included on the face of each invoice.

58. Settling Defendant may contest payment of any Future Response Costs or State Costs under Paragraph 57 if Settling Defendant determines that the United States or the State has made an accounting error or if, with respect to EPA's Future Response Costs, Settling Defendant alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or State Costs and the basis for objection. In the event of an objection, Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States or State Costs to the State in the manner described in Paragraph 57. Simultaneously, Settling Defendant shall establish an

interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or contested State Costs. Settling Defendant shall send to the United States or the State (as applicable), as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs or uncontested State Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States or the State, if State Costs are disputed, in the manner described in Paragraph 57. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which Settling Defendant did not prevail to the United States or the State, if State Costs are disputed in the manner described in Paragraph 57; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs and the State for its State Costs.

59. In the event that the payments required by Subparagraph 56 are not made within the dates specified therein or the payments required by Paragraph 57 are not made within 30 days

of the Settling Defendant's receipt of a bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on the \$1.5 million that Settling Defendant owes within 30 days of entry of this Consent Decree shall begin to accrue on the Effective Date. The Interest to be paid on the \$4.5 million that Settling Defendant owes within 30 days of receipt of the final payment from the Title X program of the Energy Policy Act of \$49,636,191.24 shall begin to accrue on the date of DOE's final payment. The Interest on Future Response Costs and State Costs shall begin to accrue on the date of the bill. The Interest on the State Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 76 or 77. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 57.

XVI. PAYMENT TO DOI

60. Within 30 days of the Effective Date, Settling Defendant shall pay to DOI \$75,000 for DOI's participation in the implementation of the Mitigation and Restoration Plan and the projects related to streambank and streambed restoration. Payment shall be made in accordance with the procedures set forth in Paragraph 15.c.

XVII. INDEMNIFICATION AND INSURANCE

61. Settling Defendant's Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and

hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Defendant notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 61, and shall consult with Settling Defendant prior to settling such claim.

62. Settling Defendant waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work, including, but not limited

to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work, including, but not limited to, claims on account of construction delays.

63. No later than 15 days before commencing any on-site work at the Kress Creek or STP River OU, Settling Defendant shall secure and shall maintain comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the work at either the Kress Creek Site or STP River OU under this Consent Decree, Settling Defendant shall provide to EPA and the State certificates of such insurance. Settling Defendant shall resubmit such certificates each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

64. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards in the RODs or SOW or the requirements of the Mitigation and Restoration Plan. "Force Majeure" may include an inability to perform obligations under this Consent Decree due to the Local Communities' denial of access to properties owned by them or due to the issuance of an injunction by a court of competent jurisdiction.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within five days of when Settling Defendant first knew that the event might cause a delay. Within 30 days thereafter, Settling Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or

minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

66. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

67. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 64 and 65, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

69. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

70. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 71 or Paragraph 72.

b. Within 20 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 71 or 72. Within 7 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 71 or 72, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 71 and 72.

71. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA and DOI (if applicable) and the State (if applicable) under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the provisions of the RODs.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 71.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Subparagraphs 71.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 71.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute

must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 71.a.

72. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 70, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. EPA's decision shall be binding on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph S of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

73. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated

penalties with respect to the disputed matter shall continue to accrue in accordance with Paragraph 79, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 83. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

74. For disputes involving reimbursement of State Costs required to be paid pursuant to Paragraph 57.g, the State shall be the party to the dispute and the State shall be substituted for EPA in each reference to EPA made in Paragraphs 70 through 73.

XX. STIPULATED PENALTIES

75. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 76 and 78 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure) or unless EPA, in its unreviewable discretion, waives its right to demand all or a portion of the stipulated penalties due under this Section. "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

76. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 76.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th day
\$ 1,500	15th through 30th day
\$ 4,000	31st day and beyond

b. Compliance Milestones.

- (i) Failure to submit the following plans in a timely manner and/or adequate form: Pre-Design Investigation Work Plan and Final Design/Remedial Action Work Plan;
- (ii) Failure to commence and/or complete pre-design field work and/or Remedial Action activities in accordance with the schedule approved for such work;
- (iii) Failure to conduct groundwater monitoring at the RKP Site in accordance with Paragraph 14 and the SOW;
- (iv) Failure to commence and/or complete any Mitigation and Restoration Work in accordance with the schedule approved for such work;
- (v) Failure to implement any work that may be required under Paragraphs 16 or 24;
- (vi) Failure to undertake emergency response, if required, under the circumstances of Section XIV.

77. Stipulated Penalty Amounts - Payments, Reports (other than those specified in Paragraph 76.b(i)) and Paragraph 31(a).

a. The following stipulated penalties shall accrue per violation per day for failure to: (i) make timely payments required under Sections VI, XV, XVI of this Consent Decree; or (ii) submit timely or adequate reports or other written documents pursuant to this Consent Decree (other than the written documents identified in Paragraph 76.b(i)); or (iii) comply with the requirements of Paragraph 31(a).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,000	15th through 30th day
\$ 2,000	31st day and beyond

78. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 98 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Defendant shall be liable for a stipulated penalty in the amount of \$1 million.

79. a. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA, DOL, and State Approval of Plans and Other Submissions), during the period, if any, beginning on the 20th day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 71.b or 72.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 7th day after the date that Settling Defendant's reply to the United States' Statement of Position is received until the date that the EPA Region 5 Superfund Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 7th day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

b. Notwithstanding the provisions of Paragraph 79.a, if Settling Defendant's performance of any obligation under this Decree is delayed by the refusal by one of the Local

Communities to allow access to its property, stipulated penalties shall not accrue until the necessary access is obtained, provided that Settling Defendant cooperates fully with any efforts by the United States to obtain access, including through the use of the United States' access authorities under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

c. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

80. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant of a violation.

81. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Superfund Accounting, P.O. Box 70753, Chicago, IL 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID 05QS (Kress Creek Site), 05QT (RKP Site), 05QW (STP Site), the DOJ Case Number 90-11-2-07349/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

82. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

83. Penalties shall continue to accrue as provided in Paragraph 79 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States or to Settling Defendant to the extent that it prevails.

84. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

85. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available

by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

86. United States. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, 90, and 91 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant and Settling Defendant's Related Persons for: (1) response costs paid or to be paid relating to the Kerr-McGee West Chicago NPL Sites under Section 107 of CERCLA; (2) response actions relating to the Kerr-McGee West Chicago NPL Sites under Section 106 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act; and (3) natural resource damages relating to the RKP, Kress Creek, and STP Sites under Section 107 of CERCLA. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payment required by Paragraph 56.c of Section XVI (Payments for Response Costs). With respect to future liability, the covenants not to sue with respect to a particular Site shall take effect upon issuance of the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site in question. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue (and the reservations thereto) extend only to Settling Defendant and to Settling Defendants' Related Persons; they do not extend to any other person.

87. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to the right to:

- (a) institute proceedings in this action or in a new action, or
- (b) issue an administrative order seeking to compel Settling Defendant

to perform further response actions relating to a particular Site or to reimburse the United States for additional costs of response at that Site, if, prior to the Paragraph 50, 51, 52, or 53

Certification of Completion for the particular Site

- (1) conditions at the Site in question, previously unknown to EPA, are discovered, or
 - (2) information, previously unknown to EPA, is received, in whole or in part,
- and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the response actions for the particular Site in question are not protective of human health or the environment.

88. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to the right to:

- (a) institute proceedings in this action or in a new action; and/or
- (b) issue an administrative order seeking to compel Settling Defendant

to perform further response actions relating to a particular Site or reimburse the United States for additional costs of response at that Site, if, subsequent to the Paragraph 50, 51, 52, or 53

Certification of Completion for a particular Site

- (1) conditions at the Site in question, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the response actions for the particular Site in question is not protective of human health or the environment.

89. For purposes of Paragraph 87 (United States' Pre-certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD for the Site in question was signed and set forth in the ROD for that Site and the administrative record supporting the ROD. For purposes of Paragraph 88 (United States' Post-certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of the Certification of Completion for the Site in question and set forth in the ROD for that Site, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site.

90. United States' Reservations of Rights regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Defendant in this action or in a new action for recovery of Natural Resource Damages based on conditions with respect to the RKP, Kress Creek and STP Sites, unknown to the United States as of the Date of Lodging of this Consent Decree, that cause releases of hazardous substances that result in injury to, destruction of, or loss of natural resources.

91. United States' General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other

provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Sites;
- c. liability based upon Settling Defendant's ownership or operation of the Sites, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Sites, other than as provided in the RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendant;
- d. criminal liability;
- e. liability for violations of federal or state law which occur during or after implementation of the Work;
- f. liability, prior to the Paragraph 50, 51, 52, or 53 Certification of Completion for a particular Site, for additional response actions at the Site that EPA determines are necessary to achieve Performance Standards in the ROD and SOW for that Site, but that cannot be required pursuant to Paragraph 16; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Kerr-McGee West Chicago NPL Sites.

92. State of Illinois. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 93, 94, 96, and 97 of this Section, the State of

Illinois covenants not to sue or to take administrative action against Settling Defendant and Settling Defendant's Related Persons pursuant to Section 107 of CERCLA, Section 7003 of the Resource Conservation and Recovery Act, or Section 22.2 of the Illinois Environmental Protection Act, for response costs, response actions or natural resource damages relating to the RKP, Kress Creek, and STP Sites. Except with respect to future liability, these covenants not to sue shall take effect upon payment of State Costs. With respect to future liability, the covenants not to sue with respect to a particular Site shall take effect upon issuance of the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site in question. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue (and the reservations thereto) extend only to Settling Defendant and to Settling Defendants' Related Persons; they do not extend to any other person.

93. State's Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State of Illinois reserves, and this Consent Decree is without prejudice to the right to institute proceedings in this action or in a new action seeking to compel Settling Defendant to perform further response actions relating to a particular Site or to reimburse the State of Illinois for costs of response at that Site, if prior to the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site

- (1) conditions at the Site in question, previously unknown to the State of Illinois, are discovered, or
- (2) information previously unknown to the State of Illinois, is received, in whole or in part

and the State of Illinois determines that these previously unknown conditions or information together with any other relevant information indicates that the response actions for the particular Site in question are not protective of human health or the environment.

94. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State of Illinois reserves, and this Consent Decree is without prejudice to the right to institute proceedings in this action or in a new action seeking to compel Settling Defendant to perform further response actions relating to a particular Site or to reimburse the State of Illinois for costs of response at that Site, if subsequent to the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site

- (1) conditions at the Site in question, previously unknown to the State of Illinois, are discovered, or
- (2) information previously unknown to the State of Illinois, is received, in whole or in part

and the State of Illinois determines that these previously unknown conditions or information together with any other relevant information indicates that the response actions for the particular Site in question are not protective of human health or the environment.

95. For purposes of Paragraph 93 (State's Pre-certification Reservations), the information and the conditions known to the State of Illinois shall include only that information and those conditions known to the State of Illinois as of the date the ROD for the Site in question was signed and set forth in the ROD for that Site and the administrative record supporting the ROD. For purposes of Paragraph 94 (State's Post-certification Reservations), the information and the conditions known to the State of Illinois shall include only that information and those conditions known to the State of Illinois as of the date of the Certification of Completion for the Site in question and set forth in the ROD for that Site, the administrative record supporting the

ROD, the post-ROD administrative record, or in any information received by the State of Illinois pursuant to the requirements of the Consent Decree prior to the Paragraph 50, 51, 52, or 53 Certification of Completion for the particular Site.

96. State's Reservation of Rights regarding Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, the State of Illinois reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Defendant in this action or in a new action for recovery of Natural Resource Damages based on conditions with respect to the RKP, Kress Creek and STP Sites, unknown to the State of Illinois as of the Date of Lodging of this Consent Decree, that cause releases of hazardous substances that result in injury to, destruction of, or loss of natural resources.

97. State's General Reservation of Rights. The State of Illinois reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the State of Illinois reserves all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Sites;
- c. liability based upon Settling Defendant's ownership or operation of the Sites, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in

connection with the Sites, other than as provided in the RODs, the Work, or otherwise ordered by the State of Illinois, after signature of this Consent Decree by Settling Defendant;

d. criminal liability;

e. liability for violations of federal or state law which occur during or after implementation of the Work;

f. liability, prior to the Paragraph 50, 51, 52, or 53 Certification of Completion for a particular Site, for additional response actions at the Site that EPA determines are necessary to achieve Performance Standards in the ROD and SOW for that Site, but that cannot be required pursuant to Paragraph 16.

98. Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 71, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XV (Payment for Response Costs).

99. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANT

100. Covenant Not to Sue. Subject to the reservations in Paragraph 102, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Kerr-McGee West Chicago NPL Sites or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Sites, or
- c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis* Parties) and Paragraph 109 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 87, 88, 91(b) - (c), 91(f) - (g), 93, 94, 97(b) - (c), and 97(f), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

101. Within 20 days of the Effective Date, EPA and Settling Defendant jointly shall move to dismiss with prejudice the petition that Settling Defendant filed with the Environmental

Appeals Board In the Matter of Kerr-McGee Chemical LLC, Reed-Keppler Park Site, West Chicago, Illinois, CERCLA 106(b) Petition No. 03-01.

102. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

103. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

104. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Sites, including for contribution, against any person where the person's liability to Settling Defendant with respect to the particular Site in question is based solely on having arranged for disposal or treatment, or for transport for

disposal or treatment, of hazardous substances at the Site in question, or having accepted for transport for disposal or treatment of hazardous substances at the Site in question, if:

a. any materials contributed by such person to the particular Site in question constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at that particular Site; and

b. any materials contributed by such person to the particular Site in question containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at that particular Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

c. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the particular Site in question by such person contributed or could contribute significantly to the costs of response at that particular Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the particular Site in question against Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

105. Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis Parties*), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis Parties*), each of the Parties expressly reserves any and all rights (including, but not

limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

106. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken, all response costs incurred or to be incurred by the United States or any other person with respect to the Sites, and all Natural Resource Damages with respect to the RKP, Kress Creek, and STP Sites. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

107. Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, Settling Defendant will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

108. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, Settling Defendant will notify in writing the United States and the State within 10 days of service of the complaint on them. In addition, Settling Defendant will notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

109. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Kerr-McGee West Chicago Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

110. Settling Defendant shall provide to EPA, DOI, and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Kerr-McGee West Chicago NPL Sites or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, DOI, and the State, for purposes of investigation, information gathering, or testimony, Settling Defendant's employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

111. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.

§ 9604(e)(7), 40 C.F.R. § 2.203(b), Section 7 and 7.1 of the Illinois Environmental Protection Act, 415 ILCS 5/7 & 7.1, and 35 Ill. Adm. Code Part 130. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendant that the documents or information is not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, Settling Defendant shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

112. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Kerr-McGee West Chicago Sites.

XXV. RETENTION OF RECORDS

113. Until 10 years after Settling Defendant's receipt of notification pursuant to Paragraph 54.b of Section XIV (Certification of Completion of the Work), Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Kerr-McGee West Chicago NPL Sites. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

114. At the conclusion of this document retention period, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendant shall deliver any such records or documents to the United States or the State. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the

name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

115. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after reasonable inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Kerr-McGee West Chicago NPL Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Kerr-McGee West Chicago NPL Sites and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(c), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

116. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one entity to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Technical documents submitted by Kerr-McGee pursuant to this Consent Decree should be submitted to Rebecca Frey, John Rogner, Thomas Williams, Richard Allen, and Beth Whetsell, and, consistent with Paragraph 39, will be submitted electronically. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall

constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOI, the State, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-07349/1

and

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

and

Office of the Solicitor
United States Department of Interior
Division of Parks and Wildlife
1849 C Street N.W.
Mail Stop 6557
Washington, DC 20240

As to EPA:

Rebecca Frey
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Mail Code SR-6J
Chicago, IL 60604
frey.rebecca@epa.gov

Mary Fulghum
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Mail Code C-14J
Chicago, IL 60604

As to the Fish and Wildlife Service:

John Rogner
Supervisor, Chicago Field Office
United States Fish and Wildlife Service
Region 3
1250 S. Grove Ave.
Barrington, IL 60010
john_rogner@fws.gov

As to the EPA Regional Financial Management Officer:

Financial Management Officer
U.S. Environmental Protection Agency
Region 5 Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

As to the State:

Gerald T. Karr
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, IL 60601

Michelle Ryan
Illinois Environmental Protection Agency
1021 N. Grand Ave. East – P.O. Box 19276
Springfield, IL 62794-9276

Stan Yonkausk
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

IEPA State Project Coordinator
Thomas C. Williams
NPL Unit
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 1515
LaSalle, Illinois 61301-3515
thomas.williams@epa.state.il.us

IDNR State Project Coordinator
Beth Whetsell
Eco-Toxicologist
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
bwhetsell@dnrmail.state.il.us

Richard Allen, Chief
Bureau of Environmental Safety
Division of Nuclear Safety
Illinois Emergency Management Agency
1035 Outer Park Drive
Springfield, Illinois 62704

As to Settling Defendant:

Law Department
Attn: General Counsel
Kerr-McGee Corporation
123 Robert S. Kerr Avenue
Oklahoma City, OK 73102

John T. Smith, II
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401

XXVII. EFFECTIVE DATE

117. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

118. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the

construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

119. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A	Conceptual Mitigation and Restoration Design Plan
Appendix B	General depiction of the Kress Creek Site
Appendix C	Kress Creek Site Record of Decision
Appendix D	676 properties currently constituting the RAS
Appendix E	RAS Record of Decision
Appendix F	RAS Unilateral Administrative Order
Appendix G	RI/F\$ Administrative Order on Consent
Appendix H	RKP Site Record of Decision
Appendix I	General depiction of the RKP Site
Appendix J	RKP Unilateral Administrative Order
Appendix K	Statement of Work
Appendix L	General depiction of the STP Site
Appendix M	STP Site Record of Decision
Appendix N	STP ROD Clarifying Memorandum to File
Appendix O	General Depiction of the STP Upland OU
Appendix P	STP Upland OU Administrative Order on Consent

XXX. COMMUNITY RELATIONS

120. A community relations plan for the Kerr-McGee West Chicago NPL Sites already exists. Settling Defendant shall cooperate with EPA and the State in updating the community relations plan, if necessary, and providing information regarding the Work to the public. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Kerr-McGee West Chicago Sites.

XXXI. MODIFICATION

121. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and DOI (if pertaining to Mitigation and Restoration Work) and Settling Defendant. All such modifications shall be made in writing.

122. Except as provided in Paragraph 16, no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any such material modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA and Settling Defendant.

123. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

124. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

125. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

126. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the undersigned representatives of the Settling Defendant and the State of Illinois certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

127. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

128. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this

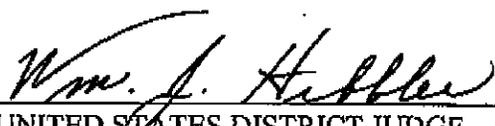
Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

129. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

130. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State of Illinois, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 10th DAY OF August, 2005.


UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Illinois v. Kerr-McGee Chemical LLC, relating to the Kerr-McGee West Chicago NPL Sites.

FOR THE UNITED STATES OF AMERICA

4/18/05
Date


KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

4/18/05
Date


WILLIAM D. BRIGHTON
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 514-2244

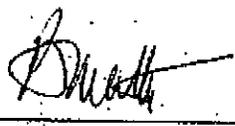
PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

Date

By: _____
LINDA A. WAWZENSKI
Assistant United States Attorney
219 S. Dearborn St.
Chicago, IL 60604
(312) 353-1994

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Illinois v. Kerr-McGee Chemical LLC, relating to the Kerr-McGee West Chicago NPL Sites.

3/30/05
Date



BHARAT MATHUR
Acting Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Illinois v. Kerr-McGee Chemical LLC, relating to the Kerr-McGee West Chicago NPL Sites.

8/2/05

Date



THOMAS V. SKINNER

Acting Assistant Administrator for the
Office of Enforcement and Compliance
Assurance

U.S. Environmental Protection Agency
1200 Pennsylvania Ave.
Mail Code 2201A
Washington, DC 20460

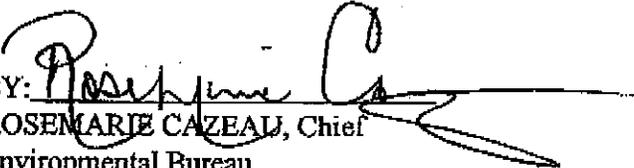
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Illinois v. Kerr-McGee Chemical L.L.C., relating to the Kerr-McGee West Chicago NPL Sites.

FOR THE STATE OF ILLINOIS

Date

LISA MADIGAN
Attorney General of the State of Illinois

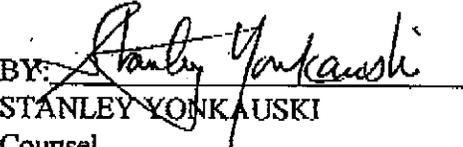
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation
Division

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

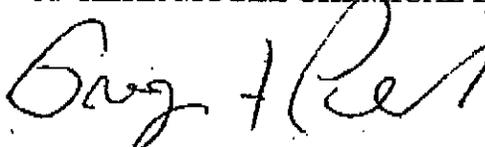
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY, as Trustee

BY: 
JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES, as Trustee

BY: 
STANLEY YONKAUSKI
Counsel
Division of Legal Counsel

FOR KERR-MCGEE CHEMICAL LLC



GREGORY F. PILCHER
Senior Vice President and Secretary
Kerr-McGee Chemical LLC
123 Robert S. Kerr Avenue
Oklahoma City, OK 73102

Date

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation
Address: 208 South LaSalle St.
Chicago, IL 60604